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"NEVADA REMAINS THE FASTED GROWING state in the nation, according to statistics released by the U.S. Census Bureau on December 20, 2002. The Census Bureau reported that the nation's population grew by 3.1 million people in year ending July 1, 2002, reaching 288.4 million. The population in the State of Nevada grew by 3.6 percent, to almost 2.2 million during the same period. The State's growth rate was more than three times the national average, but slightly lower than the State's 3.9 percent grotwth the previous year. Net migration to Nevada dipped slightly in 2002, to 59,357 from 62,268 the year before. But growth from births rose slightly, adding 15,546 people to the State's overall increase in headcount." Native American Network (January 2003).

"THE U.S. DEPARTMENT OF LABOR (DOL) announced in the Dec. 9 *Federal Register* its intention to propose changes to the rules governing the FLSA's salary and duties tests, which are used by the nation's employers to declare workers exempt–as bona fide administrators, executives, or professionals–from the federal law's minimum wage and overtime pay requirements." *DOL Weighing Changes to FLSA Rules*, Fair Labor Standards Handbook (January 2003)

JAILS IN INDIAN COUNTRY, BUREAU OF JUSTICE Statistics Bulletin (May 2002).

- 68 facilities were operating in Indian country, with the capacity to hold 2,101 persons on June 29, 2001.
- 16 jails in Indian country funded to undergo expansion, replacement, or renovation.
- In a 1-month period, June 2001, facilities in Indian country admitted 9,697 inmates, a 36% increase from June 2000.

"IN ADDITION, 29 STATES AND THE DISTRICT of Columbia restrict employers' ability to fire employees for various forms of off-duty conduct. Some states extend the protection to alcohol use, too. Rarest are laws found in four states that protect all legal activities away from the employer's premises." *Protected Behaviors at the State Level*, HR Magazine (February 2003).

NEVADA CASES

Cohen v. Mirage Resorts, Inc. 119 Nev. Adv. Op 1 (February 7, 2003). "We conclude that the exclusive remedy provisions of NRS 92A.380(2) permit a shareholder to challenge the validity of a merger based upon fraud or unlawful conduct in the merger process. Actions challenging the validity of the merger must normally be taken before the completion of the merger, whereas dissenters rights must be exercised in conformance with the timelines set forth in NRS 92A.300–92A.500."

In re Estate of D.R.G., 119 Nev. Adv. Op. 2 (February 12, 2003). The district properly granted guardianship of an eleven year old child with cystic fibrosis and cerebral palsy to the child's aunt after the mother died of cancer. The father (who referred to the child as "cripple" and "sausage arm") had not created a bond with the child, undergone

parenting and anger management classes, or shown that he had learned to manage the child's health care needs.

Echeverria v. State, 119 Nev. Adv. Op. 3 (February 12, 2003). The prosecutor breached a plea agreement by not making an affirmative recommendation of probation. "Since *Santobello* , we have stated that the State's violation of plea agreement ""requires reversal."' Our case law has implicitly rejected harmless-error analysis in the event of breach of plea agreement, and we now make that rejection explicit." "Therefore, we hold that when the State breaches a plea agreement, the case must be reassigned to a different sentencing judge for resentencing."

All Star Bonding v. State, 199 Nev. Adv. Op. 4 (February 12, 2003). A bail bond provision stated that the bond would expire one year from the date of the bond. The defendant failed to appear for sentencing, after the bond had expired. The court held the term was enforceable, public policy did not require a different result, and the solution was a court order banning bonds with limited terms.

Custom Cabinet Factory of New York, Inc. v. Eighth Judicial Dist. Court, 119 Nev Adv. Op. 5 (February 12, 2003). "For these reasons, the additional three days for service by mail should be added to the time allotted by statute or rule first. Then, if the deadline falls on a non-judicial day, the deadline should be extended to the next judicial day."

City of Reno v. Reno Gazette Journal, 119 Nev. Adv. Op. 6 (February 28, 2003). NRS 342.105 incorporates the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act and its accompanying regulations (one which declared records maintained under the regulation are confidential). The court held this provision has the effect of declaring those records to be confidential under Nevada Public Records Act and denied the release of the records to the newspaper.

"COSTS ASSOCIATED WITH PAID TIME OFF and disability absences accounted for 15% of payroll in 2001, new survey results show, adding increased emphasis to employer strategies to manage and reduce disability costs. The 2002 survey, conducted by Mercer Human Resource Consulting and Marsh Inc., finds that for an employee earning $40,000 annually, $6,000 was paid for time away from work, translating to 39 days of absence per year. Unscheduled absences alone cost nearly 5% of payroll in 2001." www.benefitnews.com

"GOVERNMENT AGENCIES HAVE FOUND several uses for streaming video. During emergency situations, for example, agencies can use the technology to communicate instantly to personnel. City and county governments also are using the technology to deliver live council meetings on the Internet. Webcasts allow homebound residents and government employees to attend the meetings virtually. Courthouses can use two-way streaming video to arraign suspects remotely, eliminating the potential for escape or personal injury during prisoner transport and greatly increasing efficiency.

Notably, there has been a significant increase in the use of streaming video for surveillance and monitoring applications. For example, the Florida Department of Transportation (FDOT) recently upgraded its traffic control system in Orlando. The traffic system now uses a Gigabit Ethernet backbone to connect everything from the traffic signal system to surveillance cameras on freeways. Video encoders transmit digital video from roadside cameras to a central command center

for viewing by operators on desktop computers and televisions. Now, FDOT personnel can easily reroute traffic or warn motorists via electronic signs of accidents on local highways."
Richard Mavrogeanes, *Video Goes Mainstream in Government*, American City and County (February 2003).

NINTH CIRCUIT CASES

Coszalter v. City of Salem, No. 00-36097 (February 18, 2003). The plaintiffs were sewer workers who reported numerous spills and safety violations to newspapers and state regulatory agencies. They filed a § 1983 action alleging violations of their First Amendment rights through the City's retaliation against them. The court restated the elements of the claim: 1) the employee engaged in protected speech, 2) the employer took an adverse employment action, and 3) the sppeck was a substantial or motivating factor for the adverse employment action.

The court rejected the position that a plaintiff must demonstrate the loss of a valuable governmental benefit or privilege in order to prove an adverse employment action. Instead, the court adopted a "reasonably likely to deter test." An employer action "need not be severe and it need not be of a certain kind. Nor does it matter whether an act of retaliation is in the form of the removal of a benefit or the imposition of a burden." If the action chills or deters the employee's exercise of First Amendment rights, it is an adverse employment action.

The court also refused to establish any bright line rule for timing of retaliation: "There is no set time beyond which acts cannot support an inference of retaliation, and there is no set time within which acts necessarily support an inference of retaliation. Whether an adverse employment action is intended to be retaliatory is a question of fact that must be decided in the light of the timing and surrounding circumstances."

Miranda v. Clark County, Nevada, No. 00-15734 (9th Cir. February 3, 2003). Miranda served 14 years on a murder before a state court overturned the conviction due to ineffective assistance of counsel and a failure to investigate. Miranda filed a § 1983 action against his trail attorney, the head of the public defender's office and Clark County, alleging two public defender policies violated his civil rights: 1) administering a lie detector test to all defendants and allocating minimal resources for preparation of defense to those clients who appear guilty because they failed the polygraph and 2) the least-experienced lawyers on the staff to capital cases without training or experience in the special demands of such cases.

The court affirmed dismissal against the trial attorney because he was not a state actor. The court reversed the dismissal of the public defender and County, finding that the public defender was acting in an administrative policymaking role, was a state actor, and may have implemented policies that infringed on Miranda's civil rights.

Miles v. State of California, No. 01-17040 (9th Cir. February 19, 2003). Miles' ADA suit was dismissed without prejudice to assertion of state law claims because the ADA claim was barred under the Eleventh Amendment. The state was awarded $12,238 in costs under FRCP 54(d). The court upheld the award, stating that an Eleventh Amendment dismissal is "based on the state's immunity and is not for want of jurisdiction" and 54(d) still applies, and that the dismissal of the federal ADA claim materially altered the legal relationship of the parties and made the state a prevailing party.

Simmons v. Sacramento County Superior Court, No. 01-16309 (9th Cir. February 10, 2003). Simmons was in jail pending a criminal trial when his unrelated civil action (over a car accident) went to trial. The state court denied him leave from jail to attend, and a default judgment was entered against. Now serving "175 years to life," Simmons filed a § 1983 action alleging his right of access to the courts and of due process were denied because of the refusal to let him attend.

The court held that a "prisoner has no constitutional right of access to the courts to litigate an unrelated civil claim." Noting that pretrial detainees have a substantive due process right against restrictions that amount to punishment, the court held Simmons still failed to show that the refusal to transport had the intent of punishment and that no punitive intent could be inferred because the purpose of the restriction (to keep detainees in jail rather than transporting them to unrelated civil litigation) "serves a legitimate penological interest."

Broam v. Bogan, No. 01-17246 (9th Cir. February 25, 2003). This case is a § 1983 action brought by two men who were convicted of child sexual abuse and served eight years before the convictions were overturned. They named the Churchill County investigator and deputy district attorney who brought the prosecution. The panel reversed the 12(b)(6) dismissal, finding the case "troubling" and holding that the plaintiffs should be given the opportunity to specify the dates of certain actions since that would determine whether absolute or qualified immunity would apply. There is a comprehensive listing of cases discussing police and prosecutor immunity.

Arizona Right to Life Political Action Comm. v. Bayless, No. 01-17065 (9th Cir. February 25, 2003). "We consider here the extent to which a state may regulate political speech in the final days before an election. To limit negative advertising and to afford candidates an opportunity to respond to 'negative hit pieces,' the Arizona legislature passed a statute requiring advance notice before distribution of certain political literature and advertising. Specifically, within ten days before an election, a political action committee advocating the election or defeat of any candidate must mail a copy of the communication to the candidate at least twenty-four hours in advance. We conclude that this regulatory scheme, which imposes a severe burden on political speech, violates the First Amendment because it is not 'narrowly tailored to serve a compelling state interest.'"

Johnson v. State of California, No. 01-56436 (9th Cir. February 25, 2003). Applying the *Turner* reasonably related to a legitimate penological interest test, the court approved California's correctional policy of racially segregating cell mates.

Skaarup v. City of North Las Vegas, No. 01-17364 (February 28, 2003). Chief Fire Marshal Skaarup was suspended for eight days for making accusations based on hearsay that two fire marshal positions were being eliminated because the City was discriminating by targeting women over 40 and that the union had cut a deal with the City. "It is out of this suspension that Skaarup has made a federal case." Later, after recommendations from a consultant, the City downgraded the fire marshal position to fire inspector, which Skaarup characterized as retaliation for exercising his First Amendment rights.

The panel held for the City, applying a balancing test. Noting that Skaarup made no effort to address the allegations to his superiors or to the public and that "untruthful information about government is not helpful to

the public" as compared to the "City's interest in not disrupting relations with the Union, the City's interest in protecting the good name of its deputy city manager, and the City's interest in not having its own reputation besmirched by comments attributed to its fire chief," the panel upheld summary judgment in the City's favor.

FMLA COMPLAINTS TO DOL ROSE 25 PERCENT IN FY 2002, Wage and Hour Alert (February 20, 2003). Workers filed 25 percent more Family and Medical Leave Act (FMLA) complaints with the U.S. Department of Labor (DOL) in fiscal year (FY) 2002 than in the prior 12-month period, according to information released by DOL Dec. 18. Over the same two-year period, damage awards to aggrieved employees also rose 25 percent - from $2.98 million in FY 2001 to $3.73 million the following 12 months.

Between FY 2001 and FY 2002, employees' complaints of their employers' refusal to grant FMLA leave increased 18 percent, from 629 such complaints filed in FY 2001 to 741 in FY 2002. Also markedly increasing were complaints of termination of employment because of leave use (1,503 complaints in FY 2002 -- a jump of 34 percent over such complaints filed in FY 2001).

OTHER CASES

Jiminez v. Madison Area Technical College, No. 01-3423 (7th Cir. February 28, 2003). Jiminez filed a civil rights action alleging race discrimination based, in large part, upon numerous letters and e-mails containing racist statements she said her colleagues had sent her. The district court, after hearing testimony from the alleged senders of the communications, found them to be blatantly false and imposed a Rule 11 sanction of dismissal with prejudice. The panel upheld that ruling and imposed FRAP 38 sanctions of attorney fees of $17,159.

Sharpe v. Cureton, 2003 FED App. 0050P (6th Cir. February 13, 2003). "We can find no principled basis upon which to restrict *Morgan* to Title VII claims, and we therefore conclude that the Supreme Court's reasoning must be applied to the firefighter's § 1983 claims. It cannot reasonably be disputed that the firefighters' claims involve discrete acts and not a hostile environment, as they were made aware of the retaliatory transfers on specific dates in September 1995. The serial violations component of the continuing violations doctrine employed by this Court is sufficiently analogous to the Ninth Circuit line of cases struck down in *Morgan*. Accordingly, *Morgan* overturns prior Sixth Circuit law addressing serial violations, *i.e.*, plaintiffs are now precluded from establishing a continuing violation exception by proof that the alleged acts of discrimination occurring prior to the limitations period are sufficiently related to those occurring within the limitations period."

Macrology (Noun)

Pronunciation: [mæ-'crah-lê-jee]

Definition 1: Wordiness, prolixity, excessively redundant speech

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